mobiles, § 597). The relation of master and servant was created between the defendant and the chauffeur, and as Gannon was driving the car on Frick's business at the time of the accident and was under Frick's control, the latter was responsible for the chauffeur's negligence. The principle controlling the case it well settled by many authorities, and it is correctly stated in Kimball *v.* Cushman (103 Mass. 194, 4 Am. Rep. 528), where it is said:

"'It is not necessary that he should be shown to have been in the general employment of the defendant, nor that he should be under any special engagement of service to him, or entitled to * * * compensation from him directly. It is enough that at the time of the accident he was in charge of the defendant's property by his assent and authority, engaged in his business, and in respect to that property and business, under his control.'

"The case is distinguished in its facts from Luckett *v.* Reighard (248 Pa. 24, 93 Atl. 773, Ann. Cas. 1916A, 662). In that case the defendant agreed for a stipulated sum not only to store the owner's machine, but also to deliver it at the owner's house and take it from the house to the garage. When, therefore, the machine was being taken to the owner's house or returned from the house to the garage by the defendant's driver, his agent, the machine was under the sole control of the defendant in the discharge of his contractual obligation. In that case it was as much the defendant's duty to deliver the automobile at the house and return it to the garage as it was his duty to keep it on storage in the garage, and while the driver of the owner of the garage was taking it to or bringing it from the house, it was on the business and under the control of the garage keeper. In that case the accident occurred when the driver was bringing the machine from the house to the garage, and it was held that the owner of the garage was liable for the injury resulting from his chauffeur's negligence."

Witnesses—Court Officials—Competency of Trial Judge.—Whether a judge may testify concerning a matter arising at a trial over which he presided is ably set forth in Hale *v.* Wyatt (N. H.), 98 Atl. 379, wherein Plummer, J., for the court says: "There is a great deal of discussion in the books as to whether a judge can testify in a trial over which he is presiding, but the better rule would seem to be that he cannot unless the evidence given is merely formal or undisputed. People *v.* Miller, 2 Parker, C. R. R. 197; Rogers *v.* State, 60 Ark. 76, 29 S. W. 894, 31 L. R. A. 465, 46 Am. St. Rep. 154; Maitland *v.* Zanga, 14 Wash. 92, 44 Pac. 117. Neither should a judge be compelled to testify in a case as to matters before him in a previous trial of the same case. Welcome *v.* Batchelder, 23 Me. 85. We are, however, not aware of any case which holds that it is incompentent

to receive the testimony of a judge, given without objection, as to what took place before him in the former trial of a cause. On the other hand, it has been held that such testimony is competent. 'There can be no legal objection to the testimony of a justice of the peace as to what occurred on a trial before him. Such testimony is common.' State *v.* Duffy, 57 Conn. 526, 18 Atl. 791. In Welcome *v.* Batchelder, supra, the court says, referring to the judge who gave testimony relating to a former trial: 'It is true that he might have been excused from testifying if he had insisted upon it. But it is no ground of exception that he did not insist upon his right to be excused.' This case was cited by the appellants in their brief. but is an authority for the appellee. Regina *v.* Gazard, 8 Car. & P. 595, and Agan *v.* Hey, 30 Hun (N. Y.) 591, are also cited by the appellants in support of their position. In the former case a grand jury were considering indicting a person for perjury, and it was proposed to examine a member of the grand jury who had acted as chairman of the quarter sessions at which the alleged perjury was committed. The grand juryman having expressed a desire not to be examined, the court advised the grand jury not to examine him. It is very probable that the reason why the court advised that the grand juryman be not examined was because he objected to it. The difference in the facts between this case and the case at bar renders it valueless as an authority for the appellants. In the latter case the court ruled that it was error to receive the statement of the justice who had previously tried the case, as a witness, as to the ground upon which he placed his decision in the defendant's favor. The court stated, however, that he was a competent witness to prove all that occurred before him. So far as this case is applicable to the instant case it supports the claim of the appellee. McGrath *v.* Seagrave, 2 Allen (Mass.) 443, 79 Am. Dec. 797, the only other case referred to by the appellants, simply holds that a magistrate may be called to prove a judgment when the record has not been extended. * * * The privilege accorded to a judge, on the ground of public policy, that he shall not be required against his will to give in testimony at the trial of a case a statement made before him, is a personal privilege of which he may avail himself or not, as he chooses. Such a statement is not privileged; it lacks the element of confidentiality which is essential to a privileged communication. Wig. Ev. § 2285. There is no basis either in reason or authority for setting aside the findings of the jury in this case, because the court received the testimony of the judge of probate, given without objection, as to a statement made in proceedings before him."

Corporations—Service of Process on—What Constitutes Business within State.—The United States Supreme Court in the case of Philadelphia, etc., R. Co. *v.* McKibbin, 37 S. Ct. 280, decided on March 6, 1917 what constitutes doing business within a state so as